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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,865	06/25/2001	Giuseppina Bestetti	2901/0J410	2194
7590 10/20/2004				
DARBY & DARBY P.C. 805 Third Avenue New York, NY 10022		EXAMINER STEADMAN, DAVID J		
		ART UNIT PAPER NUMBER		
		1652		
DATE MAILED: 10/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/891,865

Applicant(s)

BESTETTI ET AL.

Examiner

David J Steadman

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 43.

Claim(s) objected to: _____.

Claim(s) rejected: 31,33-42,44-48,58,59 and 61-66.Claim(s) withdrawn from consideration: 49-57 and 60.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ADVISORY ACTION

[1] The request for reconsideration in the amendment filed September 30, 2004 has been considered, however the amendment does not place the application in condition for allowance. While the amendment to the claims would appear to overcome the objection to the specification as set forth at item [14], the claim objections as set forth at items [15] to [19], the rejection under 35 USC 112, second paragraph, as set forth at item [21] and the rejection under 35 USC 112, first paragraph, as set forth at items [22] to [25] of the Office action mailed June 30, 2004, the amendment has not been entered because the claims as amended present new issues requiring further consideration. See MPEP § 714.13 regarding non-entry of an after final amendment.

[2] Claims 58 and 70 are confusing as the method steps are denoted as "a)" followed by "c)" and it is unclear as to whether a step "b)" is intended to be present in the claimed methods. Claims 58 and 70 recite "culturing a host bacteria cell according to claim 65" (claim 58) and "recite "culturing a host bacteria cell according to claim 66" (claim 70), however, claims 65 and 66, from which claims 58 and 70 depend are drawn to "[a] host cell." Thus, the term "a host bacteria cell" as recited in claims 58 and 70 lacks antecedent basis.

[3] Applicant's arguments have been fully considered. However, in view of the non-entry of the amendment filed September 30, 2004, applicants' arguments are not found persuasive for the reasons of record and the rejections and/or objections as set forth in the Office action mailed June 30, 2004.

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[4] Regarding applicants' claim to foreign priority, applicants state that MI 98 A 002792 is the application number of Italian patent number IT 1304500 and that receipt of Italian patent number IT 1304500 has been acknowledged. However, as the two documents are identified differently, *i.e.*, MI 98 A 002792 or IT 1304500, it is unclear to the examiner as to whether Italian patent number IT 1304500 is a certified copy of Italian patent application MI 98 A 002792. Clarification as to whether the documents are one in the same and why the documents are identified differently is requested.

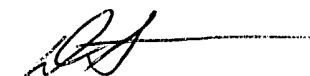
[5] Applicants' request for rejoinder is acknowledged. However, as no product claims are allowable, determination of rejoinder is not yet required.

[6] Applicants are reminded that withdrawn claims should be identified as such using the proper status identifier. Claims 71-75 should be identified as "(Withdrawn; New)."

[7] In view of the non-entry of the amendment, the claim status is as follows:

- Claims 31 and 33-66 are pending.
- Claims 49-57 and 60 are withdrawn from further consideration.
- Claims 31, 33-42, 44-48, 58-59, and 61-66 are rejected.
- Claim 43 appears to be in a condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (571) 272-0942. The Examiner can normally be reached Monday-Friday from 7:30 am to 5:00 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (571) 272-0928. The FAX number for submission of official papers to Group 1600 is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.


David J. Steadman, Ph.D.
Primary Examiner